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10/618,892

07/14/2003

Edward R. diGirolamo

4782-031

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11/17/2006

COATS & BENNETT, PLLC

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RALEIGH, NC 27602

EXAMINER

CANFIELD, ROBERT

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/618,892

Applicant(s)

DIGIROLAMO ET AL.

Examiner

Robert J. Canfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-10 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10 and 15-27 is/are rejected.
- 7) ☒ Claim(s) 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This Office action is in response to the amendment filed 09/07/06. Claims 1-4, 7-10 and 15-28 are pending. Claims 5, 6 and 11-14 have been canceled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 2, 7-10 and 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,816,008 to Hohmann in view of U.S. Patent 6,105,332 to Boyadjian.

Hohmann provides brick wall 20, studs 24, wallboard 16, ties in figures 2 and 5, plate 50/150, fastener openings for fasteners 48/148, holder/raised surface 52/152, freely movable ties 42/142, slot/retainer 56/156 and ribs 144.

Hohmann fails to provide a series of triangular shaped spikes cut out from the plate 50/150 and bent outwardly from the plate to least partially secure to the plate to the wallboard.

Boyadjian teaches that at the time of the invention it was know to provide a series of triangular shaped spikes 36 cut out from a plate and bent outwardly from the plate to least temporarily/partially secure the plate prior to inserting fasteners 40 through openings 38 in the plate.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plate of Hohmann could have also been provided with a series of triangular shaped spikes 36 cut out from the plate and bent outwardly

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from the plate as taught by Boyadjian, to at least partially secure the plate to a wall board prior to inserting fasteners 48/148 through openings in the plate. It would have been obvious because it is suggested by Boyadjian to use triangular shaped tangs 36 to temporarily or partially secure a plate prior to using screws or nails to more permanently secure a plate (column 3 lines 50+). The number of spikes used (at least four) is a choice of design which would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized the number of spikes chosen could have been varied depending on design choice of the plate and spike size. It would have been nothing other than obvious engineering design practices.

4. Claims 1, 2, 7-10, 15-18, 20-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,955,172 to Pierson in view of U.S. Patent 6,105,332 to Boyadjian.

Pierson provides brick 16 wall, studs 14, wallboard 13, plate 20, fastener openings 40 for fasteners 42, holder/raised surface/retainer/slot 21,22, and freely movable ties 12/70. Figure 5 provides a tie having transverse ribs and notches at an inner end for fitting within an elongated slot in a raised surface of a plate as shown in figure 2.

Pierson fails to provide a series of triangular shaped spikes cut out from the plate 20 and bent outwardly from the plate to least partially secure the plate to the wallboard.

Boyadjian teaches that at the time of the invention it was known to provide a series of triangular shaped spikes 36 cut out from a plate and bent outwardly from the plate to temporarily/partially secure the plate prior to inserting fasteners 40 through openings 38 in the plate.

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plate 20 Pierson could have also been provided with a series of triangular shaped spikes 36 cut out from the plate and bent outwardly from the plate as taught by Boyadjian, to at least partially secure the plate to a wall board prior to inserting fasteners 42 through openings in the plate. It would have been obvious because it is suggested by Boyadjian to use triangular shaped tangs 36 to temporarily/partially secure a plate prior to using screws or nails to more permanently secure the plate. The number spikes used (at least four) is a choice of design which would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized the number of spikes chosen could have been varied depending on design choice of the plate and spike size. It would have been nothing other than obvious engineering design practices.

5. Claims 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,955,172 to Pierson in view of U.S. Patent 6,105,332 to Boyadjian as modified above, further in view of U.S. Patent 4,206,577 to Moriez et al.

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Pierson as modified by Boyadjian provides each of the elements of these claims as noted above except that the tie has an L-shape.

Moriez teaches at the time of the invention it was known to use L-shaped ties 14 in the claimed environment.

It would have been obvious at the time of the invention to one having ordinary skill in the art that an L-shaped tie such as that taught by Moriez at 14 could have been used with the base plate and retainer of Pierson. An L-shaped tie would have been an obvious choice of tie to use when working with different bricks such as those having the shape taught by Moriez.

6. Claims 1-4, 7-10, 15 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,373,314 to Allan in view of U.S. Patent 6,105,332 to Boyadjian.

Allan provides brick wall W, studs F, wallboard (column 4, lines 14-19), plate 12, fastener openings 17/18 for fasteners 50, 51, holder/raised surface/retainer/slot 26, 27 and freely movable V-shaped ties with inwardly turned arms 44, 45.

Allan fails to provide a series of triangular shaped spikes cut out from the plate 20 and bent outwardly from the plate to least partially secure to the plate to the wallboard.

Boyadjian teaches that at the time of the invention it was know to provide a series of triangular shaped spikes 36 cut out from a plate and bent outwardly

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from the plate to least temporarily/partially secure the plate prior to inserting fasteners 40 through openings 38 in the plate

It would have been obvious at the time of the invention to one having ordinary skill in the art that the plate 12 of Allan could have also been provided with a series of triangular shaped spikes 36 cut out from the plate and bent outwardly from the plate as taught by Boyadjian, to at least partially secure the plate to a wall board prior to inserting fasteners 50, 51 through openings in the plate. It would have been obvious because it is suggested by Boyadjian to use triangular shaped tangs 36 to temporarily/partially secure a plate prior to using screws or nails to more permanently secure the plate. The number spikes used (at least four) is a choice of design which would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized the number of spikes chosen could have been varied depending on design choice of the plate and spike size. It would have been nothing other than obvious engineering design practices.

7. Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Applicant's arguments filed 09/07/06 have been fully considered but they are not persuasive.

9. In response to applicant's argument that Boyadjian is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Boyadjian is reasonably pertinent to the particular problem which applicant is concerned with. Namely, partially securing a plate to a surface with spikes prior to securing with fasteners such as screws inserted through openings within the plate. Applicant argues that there is no motivation or suggestion that it would be desirable to temporarily or partially secure a brick tie to a wall structure. The motivation is found within the Boyadjian reference, which teaches that at the time of the invention it was known to provide spikes 36 for securing a plate to a surface prior to inserting screw fasteners in openings.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Boyadjian clearly teaches that at the time of the invention it was known to provide a plate, which is to be mounted to a surface, with both spikes 36 and holes 38 for

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screws 40. One of ordinary skill in the art would have readily recognized that a plate such as 50 of Hohmann could have been provided with spikes in addition to screw holes as taught by Boyadjian without gleaning any knowledge from applicant's disclosure.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

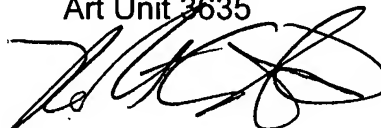
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
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A handwritten signature in black ink, appearing to read 'R. Canfield', is written over the printed name and title.